

STATE OF CALIFORNIA  
STATE WATER RIGHTS BOARD

In the Matter of Application 19115  
of Norman E. and Elizabeth M. Jaenecke  
to Appropriate from Dutch Creek Tributary  
to Bean Creek in Mariposa County

Decision D 1049

ADOPTED NOV 13 '61

DECISION APPROVING APPLICATION

Norman E. and Elizabeth M. Jaenecke having filed Application 19115 for a permit to appropriate unappropriated water; a protest having been received; a public hearing having been held before the State Water Rights Board conducted by W. A. Alexander, Member, on August 31, 1961, in Mariposa, California; the applicants and protestant having appeared; evidence having been received and the Board, having considered same and now being fully informed in the premises, finds as follows:

1. Application 19115 is for a permit to appropriate 110 acre-feet per annum by storage between October 1 of each year and April 30 of the succeeding year for irrigation purposes from Dutch Creek, Mariposa County. The point of diversion is to be located within the SW $\frac{1}{4}$  of the SE $\frac{1}{4}$  of Section 33, T2S, R17E, MDB&M.

2. The applicants' point of diversion is located approximately 2.5 miles above the junction of Bean and Dutch Creeks, tributaries to the North Fork of the Merced River, and approximately 50 miles above Merced Irrigation District's Exchequer Dam.

1049

3. The protestant Merced Irrigation District holds Licenses 990, 2684, 2685, and 6047 for its Exchequer project, having diverted 778,400 acre-feet of water for generation of hydroelectric power and 577,600 acre-feet of water for irrigation under the authority of these licenses during the 1956 season.

4. The District also holds Permit 12825 authorizing diversion of 900,000 acre-feet per annum by storage from the Merced River for domestic and irrigation purposes and Permit 12826 authorizing 900,000 acre-feet per annum by storage and 3,000 cubic feet per second by direct diversion for power purposes, subject to the reservation of certain quantities for use within Mariposa County. These permits contemplate enlargement of Exchequer Reservoir (Lake McClure) from 281,000 acre-feet to 1 million acre-feet and the construction of dams at Snelling and Bagby with reservoir capacities of 190,000 acre-feet and 415,000 acre-feet, respectively. These permits provide that they are subject to depletion of stream flow by future appropriations of water from Bean Creek for beneficial use within Mariposa County not to exceed 10,000 acre-feet in any consecutive ten-year period and 1,200 acre-feet in any one year, provided such future appropriations are initiated and consummated pursuant to law.

5. Diversions under the permit to be issued to applicants will be within the reservation of water of Bean Creek specified in Permit 12825 and Permit 12826 as set forth in the preceding paragraph, and therefore, in determining whether unappropriated water is available to applicants, the Board does not give consideration to rights under said permits of protestant.

6. The records of the flows of the Merced River correlated with the records of discharge and spills from Exchequer Dam for the period 1924-1960 show that during 24 years there was water in excess of protestant's rights for its existing project.

7. Under the protestant's present development, there is sufficient unappropriated water occurring during most years in the Merced River to satisfy the applicants. In order to protect the protestant's prior rights during years of inadequate supply, the permit issued to applicants should require them to release water they have impounded to the extent necessary to satisfy the protestant's prior rights under its licenses when it appears from the May 1 forecast of available runoff by the California Department of Water Resources that there will not be sufficient water during the then current year to satisfy these prior rights.

8. Rainfall records of the area indicate that a substantial proportion of the annual runoff of Dutch Creek occurs between October 1 and April 30, the applicants' proposed storage season, and that therefore, water will be available for storage and subsequent beneficial use by applicants.

9. There is unappropriated water available at times to supply the applicants, and subject to suitable conditions, this water may be diverted and used in the manner proposed during those times without causing substantial injury to any lawful user of water.

10. The intended use is beneficial.

IT IS HEREBY ORDERED that Application 19115 be, and the same is, approved, and that a permit be issued to the applicants subject to vested rights and to the following limitations and conditions:

1. The amount of water to be appropriated shall be limited to the amount which can be beneficially used and shall not exceed 110 acre-feet per annum by storage to be collected from about October 1 of each year to about April 30 of the succeeding year.

2. This permit is subject to the prior rights of the Merced Irrigation District to divert and/or store water from the Merced River under Licenses 990, 2684, 2685, and 6047. Should the May 1 forecast of runoff of the California Department of Water Resources indicate that the expected runoff will be insufficient to satisfy these rights held by the District, permittees shall, upon demand of the Merced Irrigation District, on or after May 1 release from their reservoir into the natural stream channel the water impounded during the preceding storage season (October 1 through April 30) to the extent necessary to satisfy said rights of the District.

Provided, however, that in determining the amount of water required to be released by permittees, it will be assumed that holders of rights subsequent in time to Application 19115 and subject to the same foregoing condition concerning releases shall have complied therewith, and that water has been and will be released from Lake McClure by the District only as authorized by its licenses and to satisfy downstream prior rights of others.

3. Diversions under this permit are within the reservation of water of Bean Creek specified in Permit 12825 and Permit 12826 of Merced Irrigation District.

4. The maximum amount herein stated may be reduced in the license if investigation warrants.

5. Actual construction work shall begin on or before June 1, 1962, and thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

6. Said construction work shall be completed on or before December 1, 1964.

7. Complete application of the water to the proposed use shall be made on or before December 1, 1965.

8. Progress reports shall be filed promptly by permittees on forms which will be provided annually by the State Water Rights Board until license is issued.

9. Permittees shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel or provide other means satisfactory to the State Water Rights Board in order that water entering the reservoir or collected in the reservoir during the current storage season may be released into the downstream channel to the extent necessary to satisfy downstream prior rights and/or to the extent that appropriation of said water is not authorized under this permit.

10. Permittees shall install and maintain suitable measuring devices (a) to measure the inflow above the high-water elevation of their reservoir and (b) to measure its outflow immediately below the storage dam in order that accurate measurement may be made of the quantity of water flowing into and out of said reservoir.

11. This permit does not authorize collection of water to storage during the period from about May 1 to about September 30 of each season to offset evaporation and seepage losses or for any other purpose.

12. Permittees shall allow representatives of the State Water Rights Board and other parties as may be authorized from time to time by said Board reasonable access to project works to determine compliance with the terms of this permit.

13. All rights and privileges under this permit including method of diversion, method of use, and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

14. In accordance with the requirements of Water Code Section 1393, permittees shall clear the site of the proposed reservoir of all structures, trees, and other vegetation which would interfere with the use of the reservoir for water storage and recreational purposes.

15. A separate application for the approval of plans and specifications for construction of the dam shall be filed with and approved by the Department of Water Resources prior to commencement of construction of the dam described under this approved water right application.

Adopted as the decision and order of the State Water Rights Board at a meeting duly called and held at Sacramento, California, on this            day of            , 1961.

Kent Silverthorne, Chairman

Ralph J. McGill, Member

W. A. Alexander, Member